HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

Writ Petition no. 1163 (S/S) 2001
(Old no. 20684 of 2000)

Diwan Singh Bisht S/o Sri Kishan Singh Bisht,
R/o village Simoli, P.O. Sitlakhet,
District Almora. ---Petitioner

Vs

1. Director of Education, Education Directorate,
   18 Park Road, Lucknow.
2. Addl. Director of Education,
   Camp Office- 18 Park Road, Education Directorate,
   Lucknow.
3. Joint Director of Education, Kumaon Mandal, Nainital,
   District Nainital.
4. District Inspector of Schools, Bageshwar,
5. District Inspector of Schools, Almoara,
6. Principal Govt. Inter College, Sailani, Bageshwar,
7. Principal, Govt. Inter College, Agaspur,
   District Almora. ---Respondents.

Sri N.S. Negi, learned counsel for the petitioner.
Sri Subhash Upadhyay, learned Standing Counsel for the State.

Hon'ble M.M. Ghildiyal, J.

Heard Sri N.S. Negi, learned counsel for the petitioner and Sri Subhash Upadhyay, learned Standing Counsel for the State.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of certiorari to quash the order dated 08.04.2000 passed by the respondent no.4 by which the services of the petitioner has been terminated. Further he prayed to issue a writ in the nature of mandamus directing the respondent not to interfere in the working of the petitioner as Class IV in the Institute and pay him salary including the arrears of pay.

Brief facts of the case are that in pursuance of the order dated 10.05.1997 passed by the District Inspector of Schools, Almora, the Principal Govt. Higher Secondary School, Agaspur

has appointed the petitioner against the leave vacancy in the pay-scale of Rs. 750-940 with the conditions that whenever Sri Mahesh Singh will join his duties, the services of the petitioner will automatically terminated. The petitioner had joined his duties on 13.05.1997 in Govt. Higher Secondary School Agaspur. Since Sri Mahesh Singh, who was permanent Class IV employee, was transferred to some other Institute, the post of Peon in Class IV fell vacant in the School, therefore, on the recommendations of the Principal, the District Inspector of Schools, Almora has appointed the petitioner on 09.08.1997 for 45 days. The limit appointing the petitioner for 45 days was extended from time to time. On receiving direction from DIOS to relieve the petitioner from services with immediate effect the Principal of the Institution wrote a letter to the DIOS to the effect that one post of Class IV was lying vacant in the Institution. On the recommendations of the Principal the DIOS, Almora has appointed the petitioner in Class IV post till the regularly selected candidate joins or by way of transfer the post is filled up. On the representation made by the petitioner, the DIOS, Almora has passed order on 31.07.1998 transferring him from Higher Secondary School, Agaspur to Govt. Inter College, Sailani district Bageshwar where he joined on 18.08.1998.

Contention of the petitioner is that he has never misrepresented or concealed the fact regarding his appointment, as the Principal as well as the DIOS appointed the petitioner from time to time in Class IV post. But on 28.02.2000 the DIOS, Bageshwar has issued a show cause notice to the petitioner alleging therein that the services of the petitioner were temporary, therefore he cannot be transferred to like those regular employees. The petitioner on 08.03.2000, submitted reply to the show cause notice to the DIOS, Bageshwar. But without affording opportunity of hearing and without issuing charge sheet, the services of the petitioner was terminated by the DIOS, Bageshwar on 08.04.2000 which is order impugned in the present writ petition.

On the other hand, the respondents in their counter affidavit have admitted that in compliance of the order of the Joint Director of Education, Kumaon Mandal, Nainital, the Principal Govt. Inter College, Agaspur has appointed the petitioner as Class IV employee on the short term basis against a leave vacancy but the appointment of the petitioner was not on the regular category. The petitioner was lateron appointed on the post of Class IV under caretaker adjustment in the pay-scale of Rs. 750-940 with the restrictions that when duly selected candidate will join the Institution, the services of the petitioner will automatically come to an end. It has been further submitted that the nature of appointment of the petitioner was time bound and temporary. The petitioner was wrongly transferred from the Institution because only the employee appointed on regular basis can be transferred. The application for transfer was forwarded by the Principal on the impression that the petitioner was a regular employee for which the Joint Director of Education has also framed charge-sheet against the Principal under the C.C.A Rules. It has been further stated in the counter affidavit that before terminating the services of the petitioner a show cause notice was served upon him and after receiving reply of the petitioner and after affording due opportunity of hearing, his services were terminated on 8.4.2000 considering him to be the temporary employee.

Learned counsel for the petitioner has submitted that it is apparent from the order impugned in which it has been mentioned that the petitioner, in collusion with the Principal of the Institution, has got himself transferred fraudulently. Therefore, mentioning of the word ‘fraudulently’ in the order itself has credited stigma towards the innocent petitioner for no cause. This stigmatizing endorsement will adversely affected the petitioner in getting some alternative job and will ruin his

future. The authority may not be allowed to defy the principles of natural justice. The Principal of the Institution was fully

aware about the service conditions imposed upon the petitioner. The petitioner has never misrepresented to the authority concerned and was transferred by the DIOS, Almora on the recommendations sent by the Principal of the Institution. Therefore, the services of an employee who has served with the department for a long period cannot be treated like to those of temporary employees hence cannot be terminated as such, and the termination order dated 08.04.2000 which was passed without framing of charge or without conducting proper enquiry against the delinquent employee, is illegal. Learned counsel for the petitioner has submitted that the petitioner was, first of all, employed with the respondents on 13.05.1997 against a leave vacancy arrangement and the appointment of the petitioner was extended from time to time and at last the DIOS, Almora has appointed the petitioner till the regular selected candidate join the post. But on 28.02.2000 the DIOS, Bageshwar has issued a show cause notice to the petitioner alleging therein that the services of the petitioner were temporary, therefore he cannot be transferred to like those regular employees. The petitioner on 08.03.2000, submitted reply to the show cause notice to the DIOS, Bageshwar. But without affording opportunity of hearing and without issuing charge sheet, the services of the petitioner were terminated by the DIOS, Bageshwar on 08.04.2000. Counsel for the petitioner vehemently argued that the order impugned is stigmatic in nature and the services of the petitioner cannot be terminated without giving charge-sheet or without conducting proper enquiry.

The dismissal order has serious consequences, it could be passed only after complying with the Rules of Natural Justice. It is not disputed in the present case that no enquiry was, at all, held and no evidence was led in presence of the petitioner nor

the petitioner was given opportunity of cross-examining the witnesses produced against him or to lead his own evidence. In

fact, no charge-sheet was ever served upon him, though the action culminating into passing of impugned order is founded on various charges, as such, the impugned order has been passed in violation of Principle of Natural Justice.

On the facts and reasons recorded above, the writ petition is liable to be allowed.

Consequently, the writ petition is allowed. The order dated 08.04.2000, passed by respondent no. 4, terminating the services of the petitioner without affording him opportunity of hearing, is quashed.

Learned counsel for the petitioner has admitted that he will not claim salary for the period from the date the services of the petitioner were terminated till his reinstatement in the Department.

Since the petitioner has not worked with the Department for the period from the date he was terminated, he will not be entitled to get the arrears of salary w.e.f. 08.04.2000 till his reinstatement. The respondents are directed to reinstate the petitioner within a period of one month from the date of production of a certified copy of this order. No order as to costs.

(M.M. Ghildiyal, J.)

Nainital:
May 9, 2005:
NCM: